

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 28, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

020D-421

OAHU

Amend Prior Board Action of November 19, 2004 under Agenda Item D-44, for Sale of Reclaimed (Filled) Land to Alvin and Anne Maeda Revocable Trust and Confirmation, at Kaneohe, Koolaupoko, Oahu, TMK (1) 4-5-58: seaward if 17.

On November 19, 2004 under Agenda Item D-44, the Board approved the Sale of Reclaimed (Filled) Land to Alvin and Anne Maeda. The appraisal report approved by the Chairperson states purchase price is \$55,000.

Mr. Maeda has requested a term easement instead of the sale on the understanding that the consideration for a 55-year term easement is considerably less than the purchase price.

Staff understands Mr. Maeda is willing to proceed to resolve the encroachment issue and staff has no objection to the request.

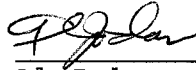
RECOMMENDATION: That the Board:

Amend its action of November 19, 2004 under Agenda Item D-44 by deleting the entire approved recommendation section and replace it with the following seawall easement section:

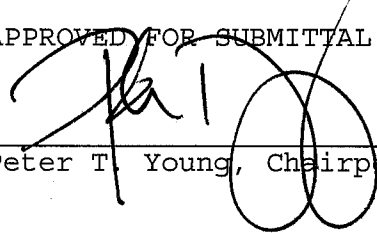
1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-5-58:17, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Alvin and Anne Maeda Revocable Trust and Confirmation for the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-5-58:17 provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,

  
\_\_\_\_\_  
Al Jodar  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Peter T. Young, Chairperson

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 19, 2004

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

020d-421

OAHU

Sale of Reclaimed Lands to Alvin and Anne Maeda Revocable  
Trust and Confirmation of Kaneohe Bay Piers Amnesty Program  
Regarding the Issuance of a Pier Lease, Kaneohe, Koolaupoko,  
Oahu, Tax Map Key (1) 4-5-58:seaward of 17

APPLICANTS:

Alvin H. and Anne O. Maeda, husband and wife, Co-trustees of the  
Alvin and Anne Maeda Revocable Trust dated May 8, 1987, whose  
mailing address is 45-032 Lilipuna Road, Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaneohe situated at Kaneohe,  
Koolaupoko, Oahu, (1) 4-5-58:seaward of 17 as shown on the attached  
map labeled Exhibit A.

AREA:

686 square feet, more or less, to be determined by Survey Division,  
DAGS.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO   x  

CURRENT USE STATUS:

Vacant and unencumbered

*as amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON *11/19/04*  
*November 19, 2004*

ITEM D-44

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson; provided that if the reclaimed land has been filled in or made with the prior approval of government authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value of the submerged land, but if the reclaimed land has been filled in or made otherwise, it shall be disposed of at the fair market value of the reclaimed or fast land.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANTS REQUIREMENTS:

Applicants shall be required to

- 1) Pay for an appraisal to determine one-time payment of fair market value for the reclaimed land;
- 2) Consolidate the remnant with the Applicant's abutting property through the City subdivision process;
- 3) Provide survey map and description according to State DAGS standards and at Applicant's own cost (previously submitted); and
- 4) Pay for the cost of the legal notice of disposition as required by Section 171-53(b), and Section 171-16(d) HRS.

REMARKS:

The Applicant is one of the pier owners participating in the Kaneohe Bay Piers Amnesty Program. Upon submission of the Applicant's survey maps, an encroachment of filled land and seawall was discovered with an area of 686 square feet.

The Office of Conservation and Coastal Lands (OCCL) staff has determined that allowing the encroachment of the seawall and fill land to remain would have no adverse impacts on the natural resources, including beach resources (Exhibit B). OCCL staff

could not confirm whether the encroachment was constructed on submerged land and does not consider it a Conservation District violation. Also, a 1961 aerial photo shows a seawall surrounding the ancient fishpond and more recent aerial photos show the same coastline configuration to confirm the present seawall existed prior to 1962. This would enable a sale of the reclaimed land.

Pursuant to Section 171-53(b), HRS, the Board may sell reclaimed land to the abutting owner if the land was filled as of June 12, 1962 and the Board finds that its disposition is not prejudicial to the best interest of the State, community or area in which such reclaimed land is located. Further, if the reclaimed land was filled in or made with the approval of government authorities and not otherwise filled in or made contrary to the public interest, the reclaimed land is valued as submerged land. Otherwise, it must be valued as reclaimed or fast land.

Since the encroachment was done without proper State Government authorization, staff recommends the Board impose a fine of \$500 for the encroachment upon public lands pursuant to Section 171-6(12) HRS. The purchase price will be fair market value based on reclaimed land.

Since the inception of the Kaneohe Bay Piers Amnesty Program, the Applicant, Mr. Alvin Maeda, has written and called the Department, Governor, legislators and the Attorney General (AG) on many occasions. Correspondence alone exceeds 37 letters from Mr. Maeda. The Governor, the Chairperson, the AG and staff have responded to such inquiries numerous times. The Department has held 11 public meetings, including Board meetings at which participants have had a chance to voice their views. Further, Mr. Maeda has had extensive conversations with staff, including three past staff appraisers as well as land agents and management. Staff has also spent time discussing Mr. Maeda's complaints with the Ombudsman's Office.

Despite this copious exchange, Mr. Maeda refuses to accept the Board-approved rent methodology and other aspects of the Kaneohe Bay Piers Amnesty Program. Staff summarizes Mr. Maeda's main issues and provides responses as follows:

- Maeda: The pier rent formula incorrectly utilizes a commercial rate in determining the value of the submerged land by using 50% of the abutting fast land value.
- Staff: The Department has addressed the issue of the 50% factor used to arrive at the submerged land value with Mr. Maeda on numerous occasions. As mentioned, Mr. Maeda has spoken extensively with the staff appraisers. It has been explained repeatedly to Mr. Maeda that the 50% discount reflects the value of the submerged land as compared to the abutting property regardless of zoning or use of the adjacent fast land.

It is the adjustment factor, regardless of fast land use, that is used in the appraisal field to arrive at a value of the submerged land and is based on the concept that the value of the submerged land is interdependent with the value of the adjoining land. For the Amnesty Program, the zoning and use of the abutting properties is residential which is reflected in the tax assessed land value and the 4% rate of return used in the formula.

The Department's use of the 50% figure was validated by independent appraiser Jan Medusky, MAI, CRE, in his consulting report on the Appraisal Methodology for Shoreline Encroachments (March 2004). Mr. Medusky recommended using an identical 50% discount factor in calculating the submerged land value for shoreline encroachments abutting residential land. He states, "A 50 percent deduction is generally perceived by market participants in Hawaii as a reasonable deduction for submerged land. It is the same adjustment incorporated into the Kaneohe Bay Pier policy. The Consultants have reviewed submerged land discounts used in Alaska, California, Oregon and Washington and conclude that the 50 percent submerged land discount typically used in Hawaii is reasonable."

Staff notes that even Board Member Yamamura attempted to clarify this appraisal issue with Mr. Maeda at a previous Board meeting. However, Mr. Maeda dismissed Member Yamamura's comments and indicated he did not care that Member Yamamura was a licensed appraiser.

Maeda: The pier rent formula is not an appraisal pursuant to Section 171-17, HRS and is therefore illegal. If the Board determines the formula is an appraisal (i.e., the first appraisal in the arbitration process), then the applicant should only be required to pay the cost of one and a half appraisals if the process goes to arbitration.

Staff: The law allows the lease rental to be determined by an employee qualified to appraise lands or a disinterested appraiser whenever prudent management so dictates. The Board-approved methodology, established by our staff appraiser, is an option for pier owners who would normally be responsible for paying the cost of an independent appraisal. If a pier owner chooses to reject the formula, then he/she is responsible for following the normal process, including paying for the independent appraisal. Should the applicant be dissatisfied with the State's price, prudent management would dictate that the State have an independent appraisal for arbitration purposes.

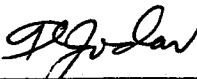
- Maeda: The Department cannot use the City and County real property assessments and should establish its own value base.
- Staff: While Mr. Medusky's consulting report did point out the fact that the tax assessment values undervalue the pier lease rents, the staff appraiser used these land values to reduce the cost of appraisals to the Amnesty Program participants. We have explained to Mr. Maeda that if he is unhappy with this, he may choose to follow the normal process for direct leases which requires the applicant to pay for an independent appraisal.
- Maeda: The Amnesty Program unfairly targets only Kaneohe Bay and not other piers elsewhere.
- Staff: Staff has repeatedly told Mr. Maeda to provide us with information on other illegal piers. He has provided no evidence that there other illegal piers exist elsewhere in the State. (We note that residential piers can only be constructed in areas with calm wave conditions such as bays.) The Department is aware of piers in Wailupe and we have been processing pier leases for these owners in addition to the already existing revocable permits in this area. (We note that these owners have to bear the full cost of an environmental assessment and Conservation District Use Permit.) Other piers, such as those at Maunalua Bay, occupy privately-owned land.
- Maeda: The State has no proof Mr. Maeda is responsible for the encroaching fill and seawall and therefore he should not have to pay the \$500 fine and appraisal cost. The encroachment is the responsibility of the developer and the City. Adverse possession can be applied to encroachments.
- Staff: Staff addressed these issues in Item D-17, entitled "Criteria for Imposing Fines on Illegal Encroachments," approved by the Board on June 28, 2002, a copy of which was provided to Mr. Maeda. One cannot claim adverse possession against the State. AG staff has also confirmed the Department's positions on these matters.

Despite these attempts to educate Mr. Maeda, he refuses to listen or to accept what licensed appraisers, the Department staff and AG staff are saying is appropriate and legal. Because we are concerned with the staff time and resources being diverted away from processing the hundreds of other requests, staff is requesting the Board confirm the Department's position on these issues with Mr. Maeda.

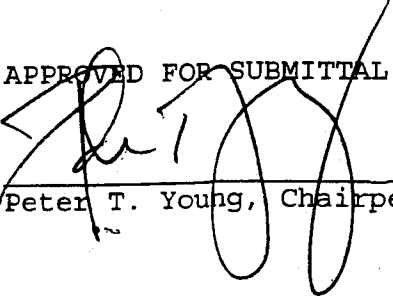
RECOMMENDATION: That the Board:

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Find that the sale of the subject-reclaimed land is not prejudicial to the best interest of the State, community or area in which subject-reclaimed land is located.
3. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the sale of the subject reclaimed land to Alvin H. and Anne Maeda, Co-Trustees of the Alvin and Anne Maeda Revocable Trust dated May 8, 1987, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current deed or grant (reclaimed land) form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the subdivision and consolidation of the subject remnant by the Applicant.
6. Confirm the Kaneohe Bay Pier Amnesty Program rent methodology approved at its meeting of February 23, 2001; confirm that if an applicant refuses to accept the formula, the applicant shall pay for the cost of an independent appraisal which shall be the first appraisal.

Respectfully Submitted,

  
\_\_\_\_\_  
Al Godar, Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Peter T. Young, Chairperson



November 19, 2004 Land Board Meeting, Item D-44:

44. Sale of Reclaimed Lands to Alvin and Anne Maeda Revocable Trust and Confirmation of Kaneohe Bay Piers Amnesty Program Regarding the Issuance of a Pier Lease, Kaneohe, Koolaupoko, Oahu, TMK: (1) 4-5-58:seward of 17. (ODLO/AI)

Approved as amended. The Board amended the Recommendation Section by adding new paragraphs 7 and 8 to read as follows:

- "7. Impose deadlines from this Board date for the Applicant to either: 1) submit payment for the cost of an independent appraisal for the pier lease within 30 days or 2) accept the pier lease formula and submit payment of \$21,055 which represents the pier lease one-time payment and document fees within 60 days, otherwise the Board's approval for the issuance of the pier lease to the Applicant shall be automatically rescinded.**
- 8. Impose a 30-day deadline from this Board date for the Applicant to submit payment for the cost of an independent appraisal for the sale of reclaimed land, otherwise the Board's approval for the sale of reclaimed land to the Applicant shall be automatically rescinded."**

# KANE OHE BAY

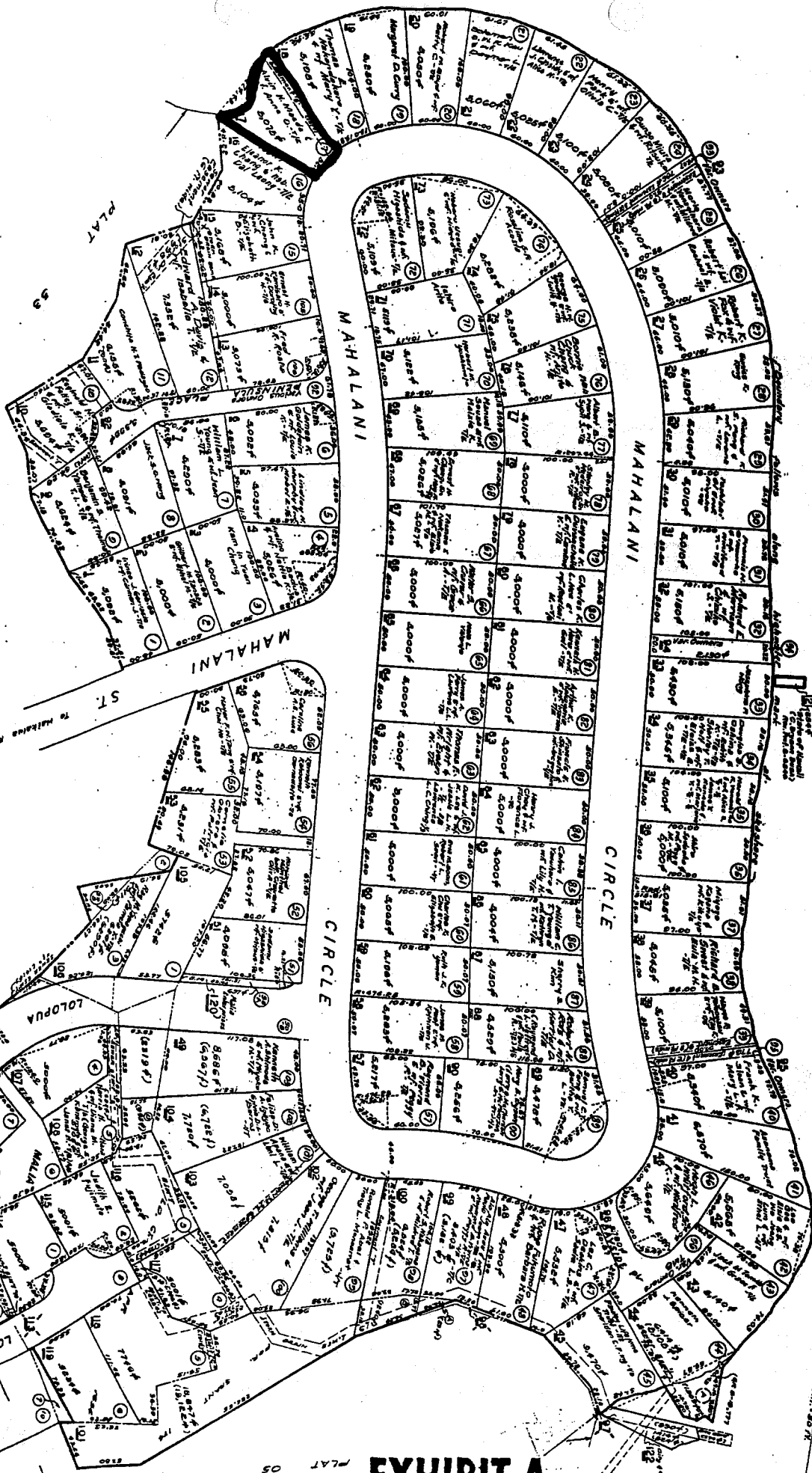


EXHIBIT A



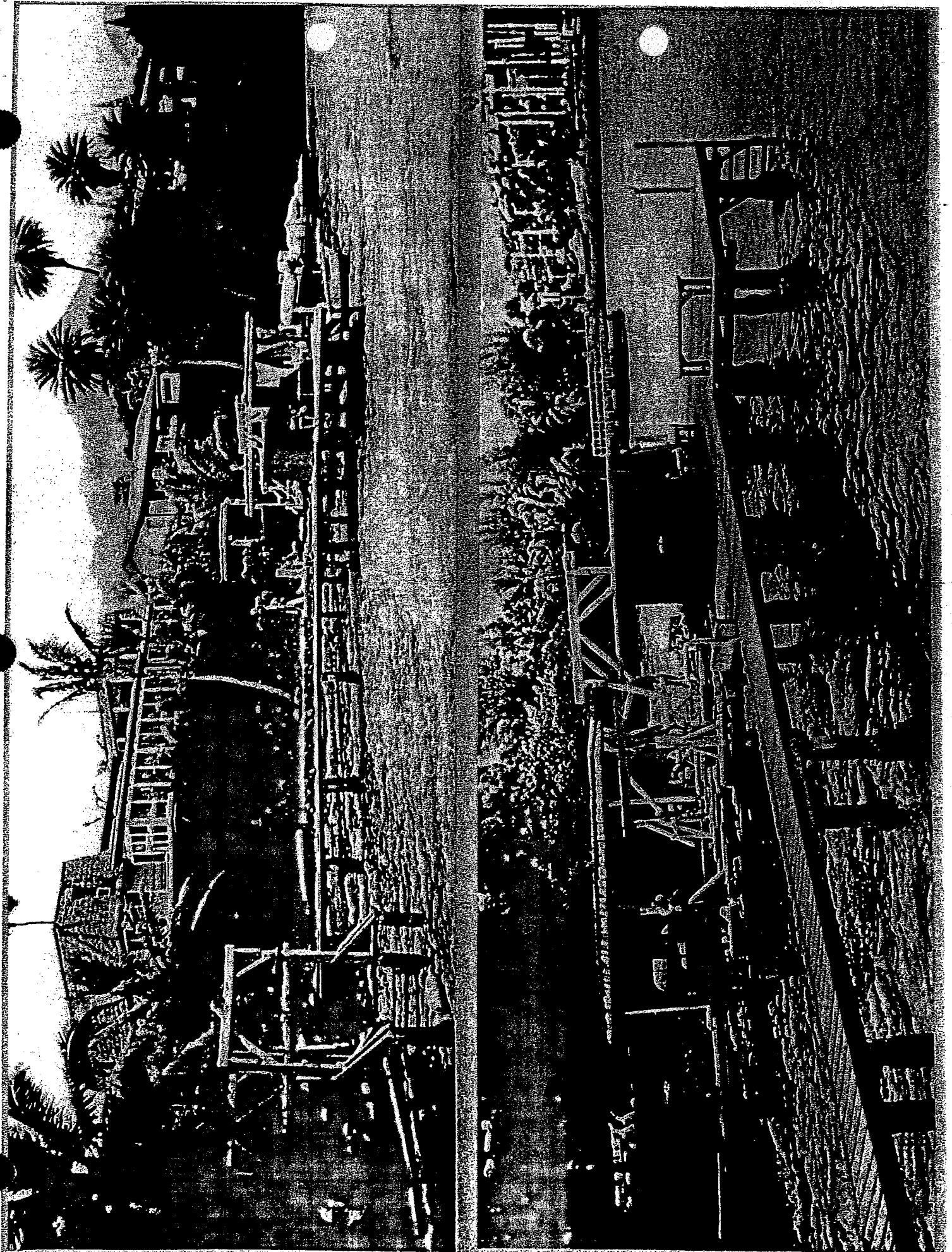


EXHIBIT A

LINDA LINGLE  
GOVERNOR



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**  
P.O. Box 621  
HONOLULU, HAWAII 96809

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

DEAN A. NAKANO  
ACTING DEPUTY DIRECTOR FOR  
THE COMMISSION ON WATER  
RESOURCE MANAGEMENT

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
CONVEYANCES  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE  
COMMISSION  
LAND  
STATE PARKS

JAN 21 2003

REF:PB:MM

File Number Encroachment: OA-03-18

Alvin and Anne Maeda  
45-215 Mahalani Circle  
Kaneohe, HI 96744

Dear Mr. and Mrs. Maeda:

**Subject: Shoreline Encroachment (Seawall and Fill) at 45-215 Mahalani Circle, Kaneohe, Oahu [TMK: 1-4-5-58:017]**

Land Division, Planning Branch staff has reviewed the submitted documentation for this case. The encroachment in question is a seawall and fill area located Makai of the homeowner's property line. The structure is Makai of the metes and bounds of the parcel in question and thus constitutes an encroachment onto State of Hawaii land. The area of encroachment is approximately 686 square feet. The applicant has submitted an aerial photo dated 1969 that shows the encroachment in question at that time.

Land Division, Planning Branch staff review of the submitted aerial photos confirms the existence of the seawall and fill area in 1969. However, this does not confirm whether the wall was built prior to 1964 which could make it non-conforming.

During the November 19, 2002 site visit staff observations confirm that the encroachment in question is long established. However, a survey map you submitted entitled Land Court Consolidation 51 does not show the encroachment in question in existence as of September 1952.

Land Division staff was unable to locate any construction permit or other land use authorization permits at the State or at the City and County of Honolulu for the seawall and fill. A review of an aerial photo submitted in 1969 doesn't establish the legality of the seawall or fill area since it provided no evidence of the improvements prior to 1964, which was the effective establishment of the Conservation District.

**EXHIBIT B**

It appears that the improvements were made sometime between 1952 and 1969. The subject improvements could have been made prior to or after the establishment of the Conservation District in 1964. While the land area underneath the improvements would likely be considered State land in their absence because they are constructed beyond the recorded boundary, we are not certain whether any violation occurred at this time. As a consequence, Land Division staff does not consider the encroachment a Conservation District violation.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted. On November 19, 2002 staff visited the site to investigate the encroachments and to gather reconnaissance information to support a recommendation for either removal of the encroachments or issuance of an easement. Of primary importance are the Department's objectives to protect and preserve shoreline resources and shoreline access.

#### Surrounding Land Uses:

It was observed during the site visit that surrounding uses are residential. The Mahalani Circle subdivision in question was built on the Punaluu fishpond. Thus all adjacent residences share this contiguous seawall.

#### Beach Resources:

CLP staff inspected the area. The tidal area is a shallow mud flat.

#### Public Access:

There is no public access to the beach.

#### Effect of Removing the Encroachment on:

*Beach Resources:* The removal of the encroachment would have no impact on public access. Public recreation such as fishing, diving and boating takes place offshore of the parcel.

*Public Access:* CLP staff has determined that public access would not be enhanced by removal of the encroachment.

*Affect on Adjacent Properties:* Removal of this portion of the wall would affect the two abutting landowners as the wall in question also fronts their parcels.

Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachment to remain through the issuance of an easement for the seawall and fill area would have no adverse impacts on natural resources, including beach resources. Therefore, the Planning Branch has no objections to an easement request being processed. The Oahu District Land Office calculates the monetary amount required to dispose this use of State land through an easement. The landowner should note that they may be subject to the administrative penalty system for unauthorized use of State land pursuant to section 171-6, Hawaii Revised Statutes.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Matthew Myers, of the Land Division, Planning Branch at 587-0382. Please contact the Oahu District Land Agent at 587-0433 regarding the processing of an easement.

Aloha,



Dierdre S. Mamiya  
Administrator

Cc: Oahu Board Member  
Oahu District Land Office  
Chairperson's Office  
Patti Edwards, DOCARE